

The respondent requests review of the following: (1) whether the claimant's need for medical treatment is a result of the accidental injury arising out of and in the course of employment on June 7, 2004; and, (2) whether the claimant gave timely notice of that injury. Respondent argues the claimant provided numerous inconsistent explanations describing not only when accidents happened but also how the accidents occurred. As a

result respondent argues claimant failed to prove he suffered accidental injury on June 7, 2004, and that he failed to provide timely notice of such alleged accident. Respondent further notes that the injury in February 2004, by claimant's own admission, had resolved and cannot be considered the cause for claimant's present need for treatment. Consequently, the respondent requests the Board to reverse the ALJ's Order and deny benefits.

Conversely, claimant argues the evidentiary record supports a finding that he is entitled to treatment based upon either date of accident. In the alternative, claimant argues there is medical causation evidence that his current need for medical treatment was the result of the February 2004 accident. Claimant also argues he met his burden of proof to establish he suffered accidental injury on June 7, 2004, and it was witnessed by respondent's supervisor, thus, respondent had actual knowledge of the incident. Consequently, claimant argues the ALJ's Order should be affirmed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

At the first preliminary hearing claimant testified that on June 7, 2004, he was walking around a diaphragm tool, tripped and fell onto a concrete floor landing on his right knee and elbow. Claimant testified his supervisor, Bryan Williams, witnessed the fall. The accident was also witnessed by the lead worker. The claimant was assisted from the floor onto a chair. Claimant was wearing shorts, a T-shirt and tennis shoes. Claimant did not receive medical attention that day because the medical staff was at a meeting and claimant was suffering from diarrhea and was nauseous. His supervisor told him to go home and seek medical attention with respondent's on site medical staff the following day.

Claimant's supervisor testified by deposition that he witnessed claimant's fall and assisted claimant after the fall. But the supervisor noted the accident occurred in February instead of June. And he could not recall claimant suffering another slip and fall in June. But on a Payroll Prior Week Adjustment Request the notation AC 6/7/04 is written on the document.¹ Claimant's supervisor prepared the document and denied he made the notation on the document, nonetheless, it clearly corresponds with claimant's alleged date of accident.

As noted above, there is conflicting testimony in this case. Thus, credibility is at issue. The ALJ had the opportunity to assess the claimant's demeanor. In this case, the ALJ believed the claimant and specifically determined claimant's fall occurred on June 7, 2004, and was witnessed by his supervisor. Under this circumstance, where conflicting

¹ Williams Depo., Ex. 3.

testimony exists, the Board finds some deference should be given to the ALJ's evaluation of claimant's credibility.

The Board is mindful that there are inconsistencies in the medical records regarding when claimant suffered other accidents and his description of the incidents to the medical providers, however, all of the incidents occurred in the course of his employment for respondent and create the impression that claimant is simply not a good historian. Moreover, the February 26, 2004 accident was admitted by respondent and Dr. Kenneth A. Jansson indicated that incident played a role in claimant's current condition.²

The Board, therefore, taking into consideration the ALJ's opportunity to assess the claimant's credibility, affirms, by the barest of margins, the ALJ's decision that claimant suffered accidental injury arising out of and in the course of his employment on June 7, 2004, and respondent had actual knowledge of the accidental injury.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.³

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated March 29, 2005, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2005.

BOARD MEMBER

c: Kelly W. Johnston, Attorney for Claimant
Kirby A. Vernon, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

² P.H. Trans. (Nov. 9, 2004), Cl. Ex. 2 at 4.

³ K.S.A. 44-534a(a)(2).